

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Claims 1, 3, 6-8, 10-13 and 15-23 are allowed.
2. The following is an examiner's statement of reasons for allowance: The examiner is persuaded by applicant's arguments and data presented in the remarks dated 12/21/09 and the declaration of Noboru Ohmori dated 12/21/09. Applicant has contended that the closest prior art cited by the examiner, Ohba, would not fairly disclose to one of ordinary skill in the art producing the gas barrier film disclosed in Ohba by a method that did not include heat treatment of the film. While the examiner previously interpreted Ohba to disclose heat treatment of the film recited to be an optional procedure to "enhance the water resistance and gas barrier properties of the polymer layer", the examiner is now persuaded by applicant's arguments and reconsideration of the nature of the invention disclosed in Ohba that the method step heat treating the polymer film is necessary to the invention of Ohba and that dispensing with this method step would undermine the use of the invention for its intended purpose. As cited by applicant on page 8 of the remarks "if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984) MPEP 2143.01(V)" The recitations in Ohba highlighted by applicant on page 8 of the remarks underscore the necessity of the heat treatment step

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disclosed in Ohba. Furthermore, all of the examples disclosed by Ohba employ heat treatment in order to increase the barrier properties of the polymeric film. Since the polymeric film disclosed by Ohba is specifically recited to be a gas barrier film, the examiner is persuaded that dispensing with a processing step necessary to impart barrier properties would render the modified invention unsatisfactory for its intended purpose.

3. The examiner is also persuaded by the data presented in the declaration of Noboru Ohmori dated 12/21/09. Ohmori prepared films according to the precise instructions disclosed in Ohba and attempted to then stretch films that had undergone the heat treatment step disclosed by Ohba. Neither film tested was able to be heat stretched after being subjected to heat treatment. Therefore, the heat treatment step necessary to Ohba is detrimental to the instantly claimed invention. Furthermore, the disclosure of Ohba does not recite producing stretch formed articles from the polymer film disclosed. Although stretch forming is a common technique in the polymer packaging arts, the declaration of Ohmori demonstrates that in the instant case, the claimed invention required additional consideration not suggested in the disclosure of Ohba, since the films of Ohba are not able to be stretched. Therefore, one of ordinary skill would not have had a reasonable expectation of success in adapting the films having the same composition as those of Ohba for stretch molding applications.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

M.L.J.  
3/26/10

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794